UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/26351
24 August 1993

ORIGINAL: ENGLISH

REPORT PURSUANT TO PARAGRAPH 5 OF SECURITY COUNCIL RESOLUTION 837 (1993) ON THE INVESTIGATION INTO THE 5 JUNE 1993 ATTACK ON UNITED NATIONS FORCES IN SOMALIA CONDUCTED ON BEHALF OF THE SECRETARY-GENERAL

1. In its resolution 837 (1993) of 6 June 1993, the Security Council reaffirmed, among other things, the authority of the Secretary-General to secure the investigation of the actions of those responsible for the armed attacks on 5 June 1993 on United Nations peace-keepers in Mogadishu, including those responsible for publicly inciting such attacks. The Council also requested the Secretary-General to report on the implementation of the resolution.

2. On 14 and 18 June 1993, the Secretary-General presented to the Council reports on actions relating to the 5 June and 12/13 June 1993 incidents in Mogadishu. The Secretary-General informed the Council that a more comprehensive investigation of the 5 June 1993 incident was being undertaken.

3. An independent expert, Professor Tom Farer of the American University, Washington, was engaged to carry out the investigation. On 12 August 1993, Professor Farer submitted his report to the Secretariat. The executive summary of the report is contained in the annex to the present document. The full report, together with its annexes, is available in English only for consultation in the Office of the Under-Secretary-General for Peace-keeping Operations (room S-3727).

Annex

Report of an investigation into the 5 June 1993 attack on United Nations forces in Somalia by Professor Tom Farer

1. On 5 June 1993, 24 soldiers serving in Somalia under the United Nations flag were killed in a series of attacks on Pakistani units that began without warning at about 0930 hours and continued relentlessly until the late afternoon. An additional 56 Pakistani soldiers were wounded, of whom 11 were crippled for life. The attacks occurred in the southern sector of Mogadishu, an area the Somali National Alliance (SNA), a political faction led by General Mohamed Farah Hassan Aidid, had long dominated. A number of those killed and wounded were distributing food to Somali citizens at the time they were assaulted. Others were returning from participation in the inspection of an authorized weapons storage site. Still others were ambushed attempting to rescue those initially attacked and to evacuate the wounded, some of whom were bleeding to death on 21 October Road, the scene of the main assault.

2. In a unanimous response, the Security Council adopted resolution 837 (1993) in which the Council reaffirmed the Secretary-General's authority "to secure the investigation of [the] actions [of the responsible parties] and their arrest and detention for prosecution, trial and punishment" and requested the Secretary-General "urgently to inquire into the incident, with particular emphasis on the role of those faction leaders involved.

3. Shortly thereafter, Admiral Jonathan Howe, the Special Representative of the Secretary-General in Somalia, asked me to assume principal responsibility for conducting that inquiry. I accepted the proposal of the Special Representative of the Secretary-General on the basis of one critical understanding: I would have full freedom to conduct an inquiry that was both impartial and as complete as time and the difficult security situation in Mogadishu allowed. The present report 1/ is the result of an investigation carried out with the assistance of lawyers on the staff of the United Nations Operation in Somalia (UNOSOM II) and members of the United Nations Office of Legal Affairs. I and my colleagues began this inquiry without any presumptions concerning premeditation or responsibility. We have laboured to accumulate all available evidence and have been united in our determination to follow that evidence wherever it might lead.

4. Paragraph 5 of Security Council resolution 837 (1993) contemplates the prosecution, trial and punishment of those responsible for attacks on UNOSOM II personnel. It does not, however, designate the tribunal before which the evidence gathered by the investigation should be presented; nor does it identify the applicable system or systems of law. Presumably the Council wished to postpone that decision pending completion of the investigation. In doing so, however, it left the investigators in a somewhat anomalous position, for the relevance of facts is a function of the legally defined elements of a crime. Without some appreciation of the crimes to be charged, investigators will find it difficult to establish rational limits to their inquiries.

5. Precisely in order to establish some limits, my colleagues and I decided to look to one national legal system and to international law for rules of criminal

responsibility relevant to the events of 5 June and succeeding incidents. The State with the most indisputable claim under generally recognized jurisdictional principles to have its laws apply is Somalia, since the events occurred there and most, if not all, of the prospective defendants are Somali nationals. Under Somali law, the evidence produced to date could give rise to a variety of charges under the 1962 Somali Penal Code, which has never been revoked. The charges would fall within one or more of the following broad categories: crimes by individuals against the public administration; crimes against public order; crimes endangering public safety by force; and crimes against the life and safety of the individual. Persons who planned or executed the attacks of 5 June would be guilty of at least 10 specific crimes within these categories, crimes ranging from "force or threats to a political, administrative or judicial body" to "carnage", "murder" and "seizure of a person".

6. With respect to international law, under the Nürnberg Principles, applied by the Allied Powers after World War II and subsequently reaffirmed by a unanimous General Assembly, individuals are subject to penal sanctions for conspiracy to commit and the commission of crimes against peace, crimes against humanity and violations of international humanitarian law. As originally defined to fit the circumstances of the World War's atrocities, the crimes implied authors acting in the name of some sort of public authority. But in the years since Nürnberg, the emergence of internationally protected human rights, together with exponential growth in the interdependence of societies and in the vulnerability of public interests to conspiracies by private actors, has required an extension of international criminal law to include them. Thus private persons who attack international commercial aircraft or conspire to exterminate some ethnic group (i.e. to commit genocide) are international criminals even if they are unconnected with any Government.

7. No act could by its very character more perfectly exemplify an international crime than the use of force against United Nations soldiers to prevent them from carrying out their responsibilities. Such use of force is a plain challenge to the ability of the United Nations to maintain international peace and security and hence to that minimum order on which all other collective human interests depend. Hence, in order to find that an international crime was committed in the instant case, it is unnecessary to decide whether the persons who organized, planned, approved or executed the attack of 5 June constituted a de facto authority in a part of Somalia or simply a group of private persons intent on frustrating performance of a Security Council mandate.

8. The one other clearly premeditated action against the United Nations in Somalia that occurred between 5 June and the conclusion of this inquiry was the 13 June attack on the Kilometer Four strong point in south Mogadishu, which resulted in extensive casualties to Somali citizens. It appears possible that the assailants deliberately fired on civilians in order to produce bodies for the international media. At a minimum there is strongly persuasive evidence of an intention to draw defensive fire from United Nations positions that would inevitably result in such casualties. 2/ Under either hypothesis about what occurred, a tribunal could find a violation of principles of international humanitarian law.

9. Whether the case falls under the precise terms of the Geneva Conventions of 1949 is not determinative. It is not even important. The Conventions were

designed to cover inter-State wars and large-scale civil wars. But the principles they embody have a wider scope. Plainly a part of contemporary international customary law, they are applicable wherever political ends are sought through military means. No principle is more central to the humanitarian law of war than the obligation to respect the distinction between combatants and non-combatants. That principle is violated and criminal responsibility thereby incurred when organizations deliberately target civilians or when they use civilians as shields or otherwise demonstrate a wanton indifference to the protection of non-combatants. I believe that principle was violated on 13 June.

10. As we sought to identify the persons responsible particularly for the 5 June attacks, my colleagues and I accumulated and analysed both circumstantial and other forms of evidence bearing on the issues of opportunity, means and motive. As a practical precondition for illuminating the issues of means and opportunity, it was necessary to decide whether, as alleged by General Aidid, the virtually coincident attacks launched on 5 June could plausibly be read as the spontaneous response of Somalis in south Mogadishu to the shooting of a Somali national in front of Radio Mogadishu at about 0930 that morning. By themselves, the raw circumstantial facts render that claim implausible. 3/

11. On the morning of 5 June, Pakistani forces were attacked almost simultaneously in places scattered all across southern Mogadishu: at Brigade headquarters in the National Soccer Stadium, at two feeding stations and at several strong points, as well as at key points along streets connecting these places. But the principal assault fell on Pakistani troops at checkpoint 89 on 21 October Road. Various features of that assault testify powerfully to premeditation. One was the existence of what is known in standard infantry doctrine as a "killing zone". The zone is an area in which troops, narrowly confined by natural or man-made obstacles, are subjected to concentrated fire. A second was the nature of the obstacles in this case, namely sequential roadblocks, which were strengthened as the day progressed. A third telling feature of that assault was the firing discipline manifested by the attackers. For instance, initially all the assailants seemed to be located on the south side of the road. Gunmen who had positioned themselves on the north side remained hidden and silent until soft-sided trucks loaded with reinforcements entered the zone, at which point they opened a deadly crossfire.

12. Flank protection was another sign of careful planning. Pakistani units attempting to relieve the pressure at the heart of the killing zone by working their way around behind the elevated structures occupied by the assailants quickly ran up against waiting snipers who repulsed them. A fifth significant feature of the attack was the armament employed, including heavy machine-guns and anti-tank weapons (specifically rocket-propelled grenades (RPGs)). While AK-47s and other small arms are widely and readily available in all parts of the city, .50-calibre machine-guns and RPGs are not. Nor are the munitions they fire, which are, moreover, relatively heavy. Not only were such weapons employed, they were employed in and on the roof of the several multistory structures dotted around checkpoint 89 and so situated that accurate fire could be initiated as soon as substantial forces were in the killing zone.

13. A sixth feature was the assailants' sophisticated use of locations and camouflage: the shooters rarely exposed themselves; some appeared to flit from window to window; a number of the gun barrels that could be seen were covered

with a greenish gauze. A seventh and particularly significant feature of the incident was its duration: the gunmen were able to sustain a withering fire from heavy as well as light weapons from mid-morning to late afternoon, over five hours. At no point did the rate of fire indicate any shortage of ammunition. Yet the Pakistani company trapped at checkpoint 89 found itself running short of ammunition well before the end of the attack, even though it was carrying a full complement and, moreover, because it was pinned down and had difficulty identifying targets it maintained a much lower rate of fire. Only careful pre-attack stocking of the ambush site or a prearranged system for resupplying the Somali attackers can plausibly explain the amplitude of their munitions.

14. The combined weight of these elements by itself flattens the claim of a spontaneous attack. And in considering the weight of the circumstantial evidence, they must be added to the near simultaneous attacks occurring elsewhere in south Mogadishu. People suddenly driven by overwhelming emotions do not normally construct roadblocks at peculiarly appropriate places or shrewdly calculate the best points at which to place heavy machine-guns in order to block even armoured vehicles from relieving besieged troops. Yet this is precisely what occurred on 5 June.

15. The eloquent testimony of premeditation implicit in the raw facts of 5 June leads ineluctably to three questions:

(a) Who had foreknowledge of the movements of Pakistani contingents on 5 June?

(b) Who had the authority to deploy the gunmen required to carry out that day's assaults?

(c) Who had strong and rational incentives for the assault?

Who, in other words, had the opportunity, the means and the motive to perpetrate this crime? A large and complex body of evidence leads ineluctably to the conclusion not simply that General Aidid had the requisite means, motive and opportunity, but that he had that trinity uniquely.

16. With regard to opportunity, 4/ on the afternoon of 4 June, UNOSOM officers officially informed Mohamed Hassan Awale Qaibdid, one of General Aidid's closest associates, that designated weapons sites would be inspected on the following day. He responded by stating that the inspections must not be performed and that, if they were, it would lead to "war". On the morning of 5 June, another Aidid confidante, Mr. Osman Atto, openly conceded foreknowledge of the outbreak of violence. While no one testified that the General had been informed by Qaibdid, it is grossly implausible that a matter which Qaibdid deemed so full of consequence would not be reported immediately to the man who was Chairman of SNA and its military leader, who was in Mogadishu and who resided and conducted business in a compound that was only a few moments' drive away from Qaibdid's. Furthermore, the uniform experience of persons from both the official international and the non-governmental communities who have had to negotiate with SNA was that high SNA officials, including Mr. Atto, either could not or would not take decisions on matters of any consequence without submitting them to the General for his approval. To believe that in this instance he was not

informed and that his subordinates would have taken it upon themselves to start a war with the United Nations requires an exercise in wilful credulity.

17. Concerning means, 5/ on 5 June, General Aidid was the unchallenged political and military leader of the Habre Gidr clan, which was credited by UNOSOM intelligence with a readily deployable militia of some 500 men. Since clansmen of military age number in the many thousands, the clan is the principal focus of personal loyalty for Somalis and most Somali men have some experience in the handling at least of small arms, the numbers potentially deployable by the acknowledged leader of the clan was no doubt greater than the UNOSOM estimate of persons under arms. Estimates by UNOSOM officers of the minimum number of fighters required to carry out the ambushes of 5 June vary from under 50 to 200. Taking the highest of these estimates, it is clear that even if the forces immediately available to SNA were only half what the UNOSOM Force Command had estimated, they would still have provided General Aidid with more than sufficient means.

18. Like other militia, and consistent with the experience of UNOSOM from 5 June to this day, SNA had access to automatic rifles, hand grenades, light and heavy machine-guns and RPGs. In its largest acknowledged weapons storage site, SNA had huge stocks of ammunition, as well as recoilless rifles and other heavy weapons. Since the sites had been established voluntarily by the armed factions after the arrival of and without any prior audit by the Unified Task Force (UNITAF), UNOSOM officials had no basis for determining what proportion of weapons and ammunition originally held by the factions had been deposited in the sites. Moreover, since the sites were entirely under the control of the factions, they could move material in and out at will. Assuming that the one UNITAF audit, effected after the sites were established, was accurate, then the discrepancies between it and the 5 June audit report of the UNOSOM inspectors indicate that at least the SNA sites functioned more as convenient entrepôts for weapons than as their prisons.

19. With regard to motive, 6/ in the case of General Aidid, means and opportunity coincided with ample motive. Simply by being in place as the dominant military force in the country, UNOSOM reduced the influence of those political leaders, General Aidid eminent among them, who had hitherto disposed of substantial forces. While UNOSOM remained in place, guns would no longer trump all other sources of influence. And to the extent UNOSOM succeeded in substantially disarming the warlords, they could not look forward to playing their trump after UNOSOM departed. The weapons site inspections of 5 June were an important step in that disarmament process.

20. The General's influence also was threatened by UNOSOM's incipient effort to re-establish a formal judicial system and a neutral police force, i.e. a functioning system of justice. An official judicial system would undermine the de facto political order the General had imposed on south Mogadishu. In conjunction with disarmament, the new police force would, as it grew and consolidated, spell the end of informal systems of domination. In addition, a largely fortuitous conjuncture of events may have added subjective grievance to the objective conflict between the General's interests and UNOSOM's mandate.

21. General Aidid could rationally have concluded that, by demonstrating his ability to turn Mogadishu into a zone of grave insecurity, he could force UNOSOM

to alter its programmes so that they were compatible with his bid to play a, and probably the, leading political role in a reconstituted Somalia. He could have hoped, at a minimum, to force UNOSOM to negotiate every programme with him as if he were the formal independent political authority over half the country's capital and other territory where the Habre Gidr clan or its allies predominated. And, as a maximum goal, he could rationally have hoped so to increase the costs of the United Nations operation particularly for certain key national contingents as to trigger the operation's premature termination.

22. The corresponding risks may well have appeared acceptable. His experience with UNOSOM I could have encouraged miscalculation. Operating with only 500 troops shackled by the rules of engagement hitherto deemed appropriate for a Chapter VI mandate, UNOSOM I had been passive in the face of extortionate activities by SNA and other militia. Aidid's calculations of risk could also have been influenced by the passivity of United Nations forces in the former Yugoslavia. The General is, after all, a well-travelled man familiar with international relations. He attended military academies in Italy and the former Soviet Union and was for some years the Somali Ambassador to India.

23. The circumstantial evidence of means, opportunity and motive, powerful in itself, does not stand alone. It is buttressed by the testimony of a credible witness who appears to have had direct access to the General both before and after 5 June. The witness testifies to being present when General Aidid congratulated members of SNA for the 5 June ambush. If even that was not enough, the case against the General is further reinforced, indeed would appear to be clinched, by an essentially self-authenticating document, a memorandum addressed to the General (and to his chief of security, Mr. Qaibdid) that summarizes the results of the interrogation of one of the five Pakistani soldiers taken prisoner on 5 June and subsequently turned over to Italian authorities by SNA officials. The information in this document, retrieved by UNOSOM soldiers from the house used as an office and residence by Mr. Qaibdid, is relevant only to the conduct of future military operations. Hence it strongly implies belief by the senior officials of SNA that they were at war with UNOSOM II. That belief would be baseless unless SNA had launched the 5 June assault.

CONCLUSIONS

24. The claim that General Mohamed Farah Hassan Aidid authorized the 5 June attack on Pakistani forces serving under the United Nations flag and that the attack was executed by elements of the political faction known as SNA is supported by clear and convincing evidence.

25. The attack of 5 June violated multiple provisions of the 1962 Somali Penal Code, which has never been repealed. It also constitutes a violation of international law and thus makes General Aidid and his senior colleagues liable to prosecution before an international tribunal or the criminal courts of any State.

26. The central principle of international humanitarian law - the obligation to respect the distinction between combatants and non-combatants - is violated and criminal responsibility thereby incurred when individuals or organizations use

civilians as shields for military operations or otherwise demonstrate a wanton indifference to the protection of non-combatants. There is sufficient evidence to make out a prima facie case that the 13 June attack on the Pakistani strong point at the Kilometer Four roundabout in south Mogadishu was consciously designed by persons associated with SNA to cause the wounding or killing of non-combatants.

Notes

1/ The complete report is available for consultation in the Office of the Under-Secretary-General for Peace-keeping Operations.

2/ For a more detailed analysis of the evidence, see pp. 90-96 of the complete report.

3/ For a more detailed discussion, see pp. 21-41 of the complete report.

4/ For a more detailed discussion, see pp. 49-71 of the complete report.

5/ For a more detailed discussion, see pp. 42-49 of the complete report.

6/ For a more detailed discussion, see pp. 71-90 of the complete report.